AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the mental health employment disqualification registry.

Section A. Section 630.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 630.170, to read as follows:

630.170. 1. A person who is listed on the department of mental health disqualification registry pursuant to this section, who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, or who has been [convicted] found guilty of or [pled] pleaded guilty or nolo contendere to any crime pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632.

2. A person who has been [convicted] found guilty of or [pled] pleaded guilty or nolo contendere to any felony offense as defined in chapter 195; any felony offense against persons as defined in chapter 565; any felony [sexual] offense as defined in chapter 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, 568.175, 569.020, 569.025, 569.030, 569.035, 569.040,

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
or of an equivalent felony offense in another state, or an equivalent federal felony offense, or an equivalent offense under the Uniform Code of Military Justice, or who has been [convicted] found guilty of or [pled] pleaded guilty or nolo contendere to any violation of subsection 3 of section 198.070, or has been [convicted] found guilty of or [pled] pleaded guilty or nolo contendere to any offense requiring registration under section 589.400, or any employee hired after January 1, 2014, who has been found guilty of or pleaded guilty or nolo contendere to a violation of section 577.010 or section 577.012 and who is alleged and found by the court to be an aggravated or chronic offender under section 577.023, shall be disqualified from holding any direct-care position in any public or private facility, day program, residential facility or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632.

3. A person who has received a suspended imposition of sentence or a suspended execution of sentence following a plea of guilty to any of the disqualifying crimes listed in subsection 1 or 2 of this section shall remain disqualified.

4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section may seek an exception to the disqualification from the director of the department or the director's designee, especially if the person is in recovery and the disqualifying felony offense was alcohol or drug related. The request shall be written and may not be made more than once every six months. The request may be granted by the director or designee if in the judgment of the director or designee a clear showing has been made by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident or client of a facility, program or service. The director or designee may grant an exception subject to any conditions deemed appropriate and failure to comply with such terms may result in the person again being disqualified. Any person placed on the disqualification registry prior to August 28, 2012, may be removed from the registry by the director or designee if in the judgment of the director or designee a clear showing has been made, by written submission only, that the person will not commit any additional acts for
which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident, or client of a facility, program, or service. Decisions by the director or designee pursuant to the provisions of this subsection shall not be subject to appeal. The right to request an exception pursuant to this subsection shall not apply to persons who are disqualified due to being listed on the department of social services or department of health and senior services employee disqualification list pursuant to section 660.315, nor to persons disqualified from employment due to any crime pursuant to the provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

5. An applicant for a position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 shall:

(1) Sign a consent form as required by section 43.540 to provide written consent for a criminal record review;

(2) Disclose the applicant’s criminal history. For the purposes of this subdivision "criminal history" includes any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole; and

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315, or the department of mental health disqualification registry as provided for in this section.

6. Any person who has received a good cause waiver issued by the department of health and senior services or its predecessor under subsection [9] 10 of section 660.317 shall not require an additional exception under this section in order to be employed in a long-term care facility licensed under chapter 198.

7. Any public or private residential facility, day program, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 shall, not later than two working days after hiring any person for a full-time, part-time, or temporary position that will have contact with clients, residents, or patients:

(1) Request a criminal background check as provided in section 43.540;

(2) Make an inquiry to the department of social services and department
of health and senior services to determine whether the person is listed on the
employee disqualification list as provided in section 660.315; and

(3) Make an inquiry to the department of mental health to determine
whether the person is listed on the disqualification registry as provided in this
section.

8. An applicant who knowingly fails to disclose his or her criminal history
as required in subsection 5 of this section is guilty of a class A misdemeanor. A
provider is guilty of a class A misdemeanor if the provider hires a person to hold
a direct-care position knowing that such person has been disqualified pursuant
to the provisions of subsection 2 of this section. A provider is guilty of a class A
misdemeanor if the provider hires a person to hold any position knowing that
such person has been disqualified pursuant to the provisions of subsection 1 of
this section.

9. Any public or private residential facility, day program, or specialized
service operated, licensed, certified, accredited, in possession of deemed status or
funded by the department or any mental health facility or mental health program
in which people are admitted on a voluntary basis or are civilly detained
pursuant to chapter 632 that declines to employ or discharges a person who is
disqualified pursuant to the provisions of subsection 1 or 2 of this section shall
be immune from suit by that person or anyone else acting for or in behalf of that
person for the failure to employ or for the discharge of the person due to
disqualification.

10. Any employer who is required to discharge an employee because the
employee was placed on a disqualification registry maintained by the department
of mental health after the date of hire shall not be charged for unemployment
insurance benefits based on wages paid to the employee for work prior to the date
of discharge pursuant to section 288.100.

11. The department shall maintain a disqualification registry and place
on the registry the names of any persons who have been finally determined by the
department to be disqualified based upon administrative substantiations made
against them for abuse or neglect pursuant to department rule or
regulation. Such list shall reflect that the person is barred from holding any
position in any public or private facility, day program, residential facility, or
specialized service operated, licensed, certified, accredited, in possession of
deemed status, or funded by the department, or any mental health facility or
mental health program in which persons are admitted on a voluntary basis or are
126 civilly detained pursuant to chapter 632. The length of time the person's name
127 shall appear on the disqualification registry shall be determined by the director
128 or the director's designee, based upon the criteria contained in subsection 13 of
129 this section.
130 12. Persons notified that their name will be placed on the disqualification
131 registry may appeal such determination pursuant to department rule or
132 regulation. If the person appeals, the hearing tribunal shall not modify the
133 length of time the person's name shall appear on the disqualification registry if
134 the hearing tribunal upholds all of the administrative substantiations made by
135 the director or the director's designee. If the hearing tribunal overturns part of
136 the administrative substantiations made by the director or the director's designee,
137 the hearing tribunal may consider modifying the length of time the person's name
138 shall appear on the disqualification registry based upon testimony and evidence
139 received during the hearing.
140 13. The length of time the person's name shall appear on the
141 disqualification registry shall be determined by the director or the director's
142 designee based upon the following:
143 (1) Whether the person acted recklessly or knowingly, as defined in
144 chapter 562;
145 (2) The degree of actual or potential injury or harm to the patient,
146 resident, or client;
147 (3) The degree of actual or potential danger to the health, safety, or
148 welfare of the patient, resident, or client;
149 (4) The degree of misappropriation or conversion of patient, resident, or
150 client funds or property;
151 (5) Whether the person has previously been listed on the department's
152 disqualification registry;
153 (6) Any mitigating circumstances; and
154 (7) Any aggravating circumstances.
155 14. The department shall provide the disqualification registry maintained
156 pursuant to this section to other state and federal agencies upon request. The
157 department may provide the disqualification registry maintained pursuant to this
158 section to any public or private facility, day program, residential facility, or
159 specialized service operated, licensed, certified, accredited, in possession of
160 deemed status, or funded by the department or to any mental health facility or
161 mental health program in which people are admitted on a voluntary or
involuntary basis or are civilly detained pursuant to chapter 632. The department may also provide the disqualification registry to a recognized school of nursing, medicine, or other health profession for the purpose of determining whether students scheduled to participate in clinical rotations are included in the employee disqualification registry.